

12 Box 3 - [JGR/Appointee Clearances – 07/09/1983-07/31/1983] -
Roberts, John G.: Files SERIES I: Subject File

WITHDRAWAL SHEET

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Collection Name ROBERTS, JOHN: FILES

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KDB 7/28/2005

FOIA

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DOC NO	Doc Type	Document Description	No of Pages	Doc Date	Restrictions	
1	MEMO	ROBERTS TO FRED FIELDING RE PROSPECTIVE NOMINEE	2	7/26/1983	B6	275
2	NOTES	RE PROSPECTIVE NOMINEE	3	ND	B6	276
3	NOTES	RE 6/22/83 MEETING ET AL.	5	ND	B6	277
4	FORM	FINANCIAL DISCLOSURE REPORT (SF 278)	6	5/23/1983	B6	278
5	MEMO	ROBERTS TO FIELDING RE MEETING ON NOMINEE	2	7/8/1983	B6	279
6	FORM	FINANCIAL DISCLOSURE REPORT (SF 278) (ORIGINAL OF ID #278)	6	5/23/1983	B6	280

Freedom of Information Act - [5 U.S.C. 552(b)]

B-1 National security classified information [(b)(1) of the FOIA]

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THE WHITE HOUSE

WASHINGTON

July 11, 1983

MEMORANDUM FOR JOHN HERRINGTON

FROM: FRED F. FIELDING

All necessary clearances and certifications have been accomplished with regard to the following individual and he is ready for formal nomination by the President:

Edmund T. DeJarnette - to be Ambassador to the
Central African Republic

cc: Claire O'Donnell
Jane Dannenhauer
Dick Hauser
John Roberts

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THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

July 12, 1983

The President today announced his intention to appoint the following individuals to be Members of the National Advisory Committee for Juvenile Justice and Delinquency Prevention for the remainder of terms expiring January 17, 1984 and to be reappointed for the terms expiring January 17, 1987.

KEITH T. KOPPENHOEFER will succeed Mary Anne B. Stewart. He is presently a senior at Elder High School in Cincinnati, Ohio. He was born January 29, 1965 in Cincinnati.

JOHN LEONARD ROUSE, JR. will succeed Barbara T. Sylvester. He is a student at Prince Georges Community College. He was born September 28, 1964 in Edinburgh, Scotland.

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THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

July 13, 1983

The President today announced his intention to nominate A. Wayne Roberts to be Deputy Under Secretary for Intergovernmental and Interagency Affairs, Department of Education. He would succeed John H. Rodriguez.

Mr. Roberts is currently the Secretary of Education's Regional Representative (Region I). Previously, he was Acting Projects Director for the U.S. Synthetic Fuels Corporation (6/81-10/81); Deputy Director of White House Personnel (1/81-6/81); and Assistant Professor of Economics and Management at Johnson State College (1974-1980). He was with IBM Corporation from 1965-73.

Mr. Roberts graduated from Babson College (B.S., 1964) and University of Massachusetts (M.B.A., 1965). He currently resides in Lexington, Massachusetts and was born February 25, 1944 in Boston, Massachusetts.

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THE WHITE HOUSE

WASHINGTON

July 15, 1983

MEMORANDUM FOR DIANNA G. HOLLAND

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Appointment of Sybil C. Mobley, Michael E. Porter, B. Kipling Hagopian, Stephen I. Schlossberg, Frederick B. Dent, Robert A. Hanson, Edwin D. Dodd, Rimmer de Vries, Ed Harper, and Bruno J. Mauer to the President's Commission on Industrial Competitiveness

The President's Commission on Industrial Competitiveness is a new advisory committee established by Executive Order 12428 (June 28, 1983). The purposes of the Commission are to review means of increasing the competitiveness of United States industry, with particular emphasis on high technology, and provide appropriate advice to the President. The Commission was established in such a fashion that its members from the private sector would not be considered government employees for purposes of the conflicts laws. Thus, members are not paid for their services and "shall represent elements of industry, commerce, and labor most affected by high technology, or academic institutions prominent in the field of high technology." Under the executive order members must also "have particular knowledge and expertise concerning the technological factors affecting the ability of United States firms to meet international competition at home and abroad."

Messrs. Hanson, Dodd, Mauer, and Dent represent the industrial sector, and their industries can readily be considered deeply affected by high technology. Mr. Hagopian is from a venture capital firm and Mr. de Vries from Morgan Guaranty Bank, elements of commerce affected by high technology. Mr. Porter is from the Harvard Business School and Mrs. Mobley from the Florida A&M School of Business and Industry, prominent academic institutions. Mr. Schlossberg is an attorney, former General Counsel for the United Auto Workers. I think he can be considered to represent labor's interests, not only by virtue of his former affiliation but also because of several labor-related board memberships he currently holds. All of these prospective appointees have numerous affiliations and holdings in high technology firms

and firms affected by high technology. Since they will serve on the Commission in a representative capacity, the affiliations and holdings are not an impediment to their appointments.

Ed Harper has not submitted a PDS, but he was of course cleared for his current government position, and I have reviewed his recently-filed SF 278. Since his resignation from government service will be effective July 31, 1983, his appointment to this Commission should not be effective until after that date, so that he will be a member "appointed from the private sector" and accordingly not subject to the conflict of interest laws.

THE WHITE HOUSE
WASHINGTON

July 18, 1983

MEMORANDUM FOR JOHN HERRINGTON

FROM: FRED F. FIELDING

All necessary clearances have been accomplished with regard to the following individuals and they are ready for appointment to the President's Commission on Industrial Competitiveness:

Frederick B. Dent
Rimmer de Vries
Edwin D. Dodd
B. Kipling Hagopian
Robert A. Hanson
Bruno J. Mauer
Sybil C. Mobley
Michael E. Porter
Stephen I. Schlossberg

cc: Claire O'Donnell
Jane Dannenhauer
John Roberts
Barbara McQuown

THE WHITE HOUSE

WASHINGTON

July 25, 1983

APPOINTMENT PROCESS PERSONAL INTERVIEW RECORD

DATE OF INTERVIEW: July 14 & 19, 1983 (by telephone)
CANDIDATE: Josephine S. Cooper
POSITION: Assistant Administrator for Congressional and
External Affairs, Environmental Protection Agency
INTERVIEWER: John G. Roberts

Comments

Josephine S. Cooper is to be nominated to be Assistant Administrator of EPA for Congressional & External Affairs, one of the six assistant administrator slots authorized by Reorganization Plan No. 3 of 1970, § 5(b), as amended by Public Law 96-510, § 307. Ms. Cooper, an Independent, appears fully qualified for the post by virtue of her experience not only at EPA but also on the staff of the Senate Committee on Environment and Public Works. I have reviewed Ms. Cooper's Personal Data Statement and Financial Disclosure Report, and see nothing to preclude going forward with the nomination.

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1 MEMO

2 7/26/1983 B6

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ROBERTS TO FRED FIELDING RE PROSPECTIVE
NOMINEE

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RE 6/22/83 MEETING ET AL.				

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Bureau of the Mint

The Mint of the United States was established by act of Congress April 2, 1792 (1 Stat. 246). The Bureau of the Mint was established by act of Congress February 12, 1873 (17 Stat. 424; 31 U.S.C. 251-287).

The principal mission of the Bureau of the Mint is to manufacture an adequate volume of coins for the Nation's trade and commerce. The major activities of the Bureau also include the manufacture of medals of a national character; the manufacture and sale of proof coin sets; the custody, processing, and movement of bullion; the disbursing of gold and

silver for authorized purposes; the distribution of coins for general circulation through the facilities of the Federal Reserve Banks and branches; the receipt of outdated coins through the facilities of the Federal Reserve Banks and branches; the compilation of general data of worldwide scope relative to gold, silver, and coins; and such other functions relating to accounting, budgeting, and personnel as required by law and regulations.

For further information, contact the Bureau of the Mint, Department of the Treasury, 501 Thirteenth Street NW., Washington, D.C. 20220. Phone, 202-376-0872.

Field Institutions—Bureau of the Mint

Address	Facility Head
United States Mint, Philadelphia, Pa. 19106.	Anthony H. Murray, Jr., Superintendent.
United States Mint, Denver, Colo. 80204.	Nora Hussey, Superintendent.
United States Assay Office, San Francisco, Calif. 94102.	Thomas Miller, Officer in Charge.
United States Assay Office, New York, N.Y. 10005.	Clifford M. Barber, Superintendent.
United States Bullion Depository, Fort Knox, Ky. 40121.	George Wright, Officer in Charge.
United States Bullion Depository, West Point, N.Y. 10996.	Harry J. Edwards, Officer in Charge.
Old Mint, San Francisco, Calif. 94103.	Albert H. Norman, Officer in Charge.

Bureau of the Public Debt

The Bureau of the Public Debt, in support of the management of the public debt, prepares Department of the Treasury circulars offering public debt securities; directs the handling of subscriptions and making of allotments; formulates instructions and regulations pertaining to security issues; and conducts or directs the conduct of transactions in outstanding securities. The Bureau performs the final audit of retired securities and interest coupons; maintains accounting control over public debt receipts and expenditures, securities, and interest costs; keeps individual accounts of owners of book-entry and registered securities and authorizes the payment of

principal and interest; and adjudicates claims on account of lost, stolen, destroyed, or mutilated securities.

The Bureau's principal office and headquarters is in Washington, D.C. An office is also maintained in Parkersburg, W. Va., where most Bureau operations related to U.S. Savings Bonds, U.S. Savings Notes and Retirement Plan and Individual Retirement Bonds are handled. Under Bureau supervision, transactions in public debt securities are conducted by the Federal Reserve Banks and their branches as fiscal agents of the United States. Most banks and other financial institutions act as issuing and paying

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6 5/23/1983 B6

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FINANCIAL DISCLOSURE REPORT (SF 278)

Freedom of Information Act - [5 U.S.C. 552(b)]

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United States of America
**Office of
Government Ethics**

Office of Personnel Management
Washington, D.C. 20415

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January 7, 1983

Opinion Issued to a Department's Designated Agency Ethics Official

This is in response to your August 11, 1982, request for a formal advisory opinion on the question "whether, or under what circumstances, a federal employee's vested rights in a private corporation's pension plan constitute a 'financial interest' under 18 U.S.C. § 208, so as to bar the employee's participating in a contract or other particular matter involving that corporation." ¹

Section 208(a) reads as follows:

Except as permitted by subsection (b) hereof [providing for waivers], whoever, being an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, a Federal Reserve Bank director, officer, or employee, or of the District of Columbia, including a special Government employee, participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, partner, organization in which he is serving as officer, director, trustee, partner, or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest—

Shall be fined not more than \$10,000, or imprisoned not more than two years, or both.

¹ By letter dated August 18, 1982, you were notified that this Office had reviewed your request and had determined in accordance with 5 C.F.R. §738.305(a)(1) that it was one which the Office would answer with a formal opinion. Shortly thereafter we circulated to all executive branch Designated Agency Ethics Officials a notice of your request, seeking their views on the issue raised. We received many valuable comments, and we have taken them into consideration in the preparation of this opinion.

At the outset it is worthwhile to note that our inquiry under the statute is whether, or under what circumstances, a government employee's vested rights in a private corporation's pension plan give him either a direct or derivative financial interest in a particular matter, rather than when or whether the employee has a financial interest in the corporation.²

A government employee has a financial interest in a particular matter when there is a real possibility that he might gain or lose as a result of developments in or resolution of the matter. Section 208 does not require that the financial interest be substantial. It is not necessary that the potential gain or loss be of any particular magnitude. Nor must the potential gain or loss be probable for the prohibition against official action to apply. All that is required is that there be a real, as opposed to speculative, possibility of benefit or detriment.³

The short answer to your question, then, is that a government employee's vested rights in a private corporation's pension plan give him a financial interest in a particular matter whenever, by virtue of such vested rights, the employee is in a position to gain or lose from developments in or resolution of the matter. Whether a financial interest exists in any particular case will thus depend on both the nature of the particular matter and the

² See, by way of contrast, the predecessor of section 208, which provided:

Whoever, being an officer, agent or member of, or directly or indirectly interested in the pecuniary profits or contracts of any corporation, joint stock company, or association, or of any firm or partnership, or other business entity, is employed or acts as an officer or agent of the United States for the transaction of business with such business entity, shall be fined not more than \$2,000 or imprisoned not more than two years, or both. 18 U.S.C. § 434 (1958).

Under section 434, the appropriate inquiry was whether the government employee had a financial interest in the business entity. United States v. Mississippi Valley Generating Co., 364 U.S. 520 (1961); United States v. Chemical Foundation, Inc., 272 U.S. 1 (1926).

³ Financial interests that are insubstantial, remote, or inconsequential can be dealt with under the waiver provisions of 18 U.S.C. § 208(b), which provides in pertinent part:

Subsection (a) hereof shall not apply (1) if the officer or employee first advises the government official responsible for appointment to his position of the nature and circumstances of the judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter and makes full disclosure of the financial interest and receives in advance a written determination made by such official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the government may expect from such officer or employee, or (2) if, by general rule or regulation published in the Federal Register, the financial interest has been exempted from the requirements of clause (1) hereof as being too remote or too inconsequential to affect the integrity of the government officer's or employee's services.

terms of the pension agreement. Because of the broad range of variables in each of these factors, we have found it impossible to devise a formula that will provide the answer, in advance, to every question that might fall within the scope of your broad inquiry. It is possible, however, to make some general statements about some commonly occurring situations.⁴

Pension plans come in many shapes and sizes, and we readily concede that familiarity with all of the variations is beyond the capacity of this Office. However, we understand that in a typical plan contributions are made by the employer, the employee, or both; the funds are held by trustees, who may or may not be employed by the sponsoring organization; and the funds will be invested, often but not always, in the stock of the sponsoring company. Most plans fall into two major categories: defined contribution plans and defined benefit plans. In the case of defined contribution plans, a separate account is maintained for each participant in the plan, and the amount of benefits paid upon retirement is a function of the amount contributed and investment performance. In the case of defined benefit plans, contributions to the plan are held and invested together, and each participant receives a fixed amount of benefits when he retires. In some cases pension benefits are paid simply by the purchase of an annuity for each participant.⁵

This Office and the Office of Legal Counsel at the Department of Justice have consistently taken the position that when a government employee has vested rights in a pension plan of a corporation, and the pension plan holds stock of the corporation, the employee ordinarily has a financial interest in matters affecting that corporation.⁶ There is unquestionably a real possibility that the employee may gain or lose as a result of the

⁴ Whether or not a financial interest exists depends on a number of factual variables. Therefore, we do not believe it possible to determine in the abstract whether a vested interest in a pension plan is a "financial interest" for purposes of § 208(a). Whether or not a financial interest in a matter held by virtue of vested rights in a pension plan will be "too remote or too inconsequential" to affect the integrity of the government employee's services will also depend on both the nature of the matter and the terms of the plan. Consequently, a waiver by general rule or regulation of all financial interests held as a result of pension rights would not be proper under § 208 (b)(2). However, it may be possible for an agency to determine that financial interests held in a commonly occurring type of particular matter as a result of employee held rights in certain kinds of pensions do meet the criteria for waiver under § 208(b)(2), and we would have no objection to a waiver by general rule or regulation under such circumstances.

⁵ For a thorough treatment of the characteristics and operation of various types of pension plans see D. McGill, *Fundamentals of Private Pensions* (4th ed. 1979).

⁶ See, e.g., February 3, 1978, Memorandum from John M. Harmon, Assistant Attorney General, Office of Legal Counsel to Barbara Allen Babcock, Assistant Attorney General, Civil Division 7-9. See also R. Perkins, *The New Federal Conflict of Interest Law*, 76 Harv. L. Rev. 1113, 1131 (1963) and Association of the Bar of the City of New York, *Conflict of Interest and Federal Service* (Cambridge, Mass.: Harvard University Press, 1960), p. 218.

outcome of the matter, and this is all § 208 requires.⁷ We are also of the view that where a pension fund is controlled by employees of the sponsoring organization, the government employee ordinarily has a financial interest in matters affecting the organization. This is because the employee/trustees are acting as representatives of the sponsoring organization, and their management of the plan may be affected by developments in matters affecting that organization.

In your request for our opinion, you suggested that even where the pension plan holds stock of the sponsoring organization and/or is controlled by employees of the organization, a government employee having vested rights in the plan does not have a financial interest in matters affecting the organization if the plan is insured by the Pension Benefit Guaranty Corporation (PBGC). We do not agree.

Title IV of the Employee Retirement Income Security Act of 1974 (ERISA) established the PBGC to provide termination insurance covering most defined benefit pension plans. Upon termination of a covered plan, the PBGC guarantees the payment of benefits vested under the plan within the limits specified in ERISA. Our review of the statute and our consultations with attorneys at the PBGC and the Department of Labor have led us to conclude that the insurance payments payable under ERISA upon plan termination will often if not always be less than the benefits a participant would receive upon retirement from a viable pension fund.⁸ Consequently, coverage by ERISA does not obviate the real possibility of loss which is sufficient to create a financial interest under 18 U.S.C. § 208. Moreover, the availability of plan termination insurance is not relevant to the possibility that a government employee may benefit from the outcome of matters having a beneficial effect on the organization sponsoring the plan.⁹

⁷ Of course, there may be some flexibility in the phrase "matters affecting the corporation", but virtually all matters affecting a company can affect the value of its stock, and an employee with vested rights in the pension plan will have a financial interest in any such matter. For purposes of § 208(a), neither the value of the employee's vested rights nor the magnitude of the plan's stock holding is of consequence. These factors may, however, be significant for purposes of individual waivers under § 208(b)(1).

It is conceivable that a government employee will have a financial interest in matters affecting other companies the stock of which is held by a pension plan in which he has vested rights. Little attention has been given to this type of situation in the past, perhaps because of § 208's requirement that a financial interest be known in order for the ban on participation to apply. We see no need to focus on the issue here but note that it may present problems in some particularized cases.

⁸ See McGill, supra note 4, chapter 21 and the relevant statutory provisions (codified at 29 U.S.C. § 1301 et seq.) and regulations (29 C.F.R. Chapter XXVI).

⁹ We emphasize that our analysis does not by any means foreclose a showing in a particular case that the availability of insurance coupled with particular pension plan terms viewed in connection with a particular matter would result in a showing of no financial interest under § 208 (a) or a waivable interest under § 208 (b)(1). See pp. 2-3 supra.

Even where the pension plan under consideration neither holds stock of the sponsoring organization nor is controlled by organization employees, the determination whether a financial interest in a matter exists, and if so whether it is waivable, must be made on a case by case basis. Where an annuity purchased for a government employee under a pension plan has been fully paid for, he will ordinarily not have a financial interest in matters affecting the sponsoring organization. However, he may under some circumstances have a financial interest in matters affecting the company responsible for making the annuity payments. In the case of a defined contribution plan, where contributions are no longer being made on behalf of the government employee and his account is held by an independent trustee, it seems that the possibility that the employee might gain or lose as a result of matters affecting the sponsoring organization is purely speculative and thus not cognizable under § 208(a). Where, on the other hand, the government employee's vested rights are in a defined benefit plan, matters affecting the sponsoring company may well affect the company's ability to maintain adequate funding levels or to pay benefits when due with the result that the government employee has a financial interest in such matters under § 208(a). The provisions of ERISA do not change our conclusion, although the availability of insurance may, along with other factors, be relevant to a decision whether a waiver is appropriate under § 208(b)(1).

In sum, we recognize that making case by case determinations regarding financial interests that arise from pension plan participation may occasionally burden your agency and others. Nonetheless, we are constrained to conclude that such determinations are required. It has been our experience that the typical pension plan is so intertwined with the sponsoring organization that a government employee holding vested rights in the plan must be deemed to have a financial interest in matters affecting the organization. We feel that the burden is properly on the government employee participating in a pension plan to show otherwise.

In accordance with the provisions of 5 C.F.R. § 738.308(a)(2) we have consulted with the Office of Legal Counsel of the Department of Justice prior to issuing this formal advisory opinion. We are authorized to state that the Office of Legal Counsel agrees with our analysis and conclusions.

Sincerely,

David R. Scott
Acting Director

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ROBERTS TO FIELDING RE MEETING ON
NOMINEE

Freedom of Information Act - [5 U.S.C. 552(b)]

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FINANCIAL DISCLOSURE REPORT (SF 278)
(ORIGINAL OF ID #278)

Freedom of Information Act - [5 U.S.C. 552(b)]

B-1 National security classified information [(b)(1) of the FOIA]

B-2 Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]

B-3 Release would violate a Federal statute [(b)(3) of the FOIA]

B-4 Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]

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B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

THE WHITE HOUSE
WASHINGTON

July 28, 1983

MEMORANDUM FOR JOHN HERRINGTON

FROM: FRED F. FIELDING >

All necessary clearances and certifications have been accomplished with regard to the following individual and he is ready for formal nomination by the President:

Robert H. Miller - to be Ambassador to the Republic of the Ivory Coast

cc: Claire O'Donnell
Jane Dannenhauer
Dick Hauser
John Roberts

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

July 29, 1983

The President today announced his intention to nominate the following individuals to be Members of the Board of Directors of the National Institute of Building Sciences for terms expiring September 7, 1984.

MACDONALD G. BECKET would succeed Warner Howe. He is Chairman of the Board of The Becket Group of companies including Welton Becket Associates, an architectural/engineering firm. He is a founding contributor to the Architectural and Design Endowment for the Museum of Contemporary Art in Los Angeles and a Fellow of the American Institute of Architects. He also served on the U.S. Capitol Architect's Long-Range Planning Committee and has been admitted to the National Council of Architectural Registration Boards. He is married, has four children and resides in Los Angeles, California. He was born November 2, 1928.

KYLE CLAYTON BOONE would succeed Blanca C. Cedeno. He has been proprietor of Boone: Hunton Associates (architects, planners, interior designers) since 1968. Previously, he was an architect with Six Associates architectural firm in Asheville, North Carolina in 1963-1968; and architect with Echols-Sparger architectural firm in Marion, Virginia in 1962-1963. He received the Reynolds Aluminum prize for Architectural Students in 1962. He is married, has four children and resides in Weaverville, North Carolina. He was born December 16, 1932.

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THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

July 29, 1983

The President today announced his intention to nominate Thomas J. Healey to be an Assistant Secretary of the Treasury (Domestic Finance). He would succeed Roger William Mehle, Jr.

Since 1982, he has been Managing Director of Dean Witter Reynolds Capital Markets and Manager of its Corporate Finance Department. Previously, he was Manager, Project Finance Group at Dean Witter in 1975-1982; Vice President of Finance at Instrumentation Engineering, Inc., in 1971-1975; and Managing Partner of Camargo Associates in 1967-1971.

Mr. Healey graduated from Georgetown University (A.B., 1964) and received his Masters of Business Administration from Harvard University in 1966. He is married, has two children and resides in Chatham, New Jersey. He was born September 14, 1942 in Baltimore, Maryland.

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